

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
)	

**OPPOSITIONS TO PETITION FOR PARTIAL RECONSIDERATION
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby opposes the Wireless Internet Service Providers Association’s (“WISPA”) Petition for Partial Reconsideration (“Petition”) of the above-referenced Wireline Competition Bureau’s May 16, 2013 Report and Order (“Order”).² In its Petition, WISPA requests that the Commission revisit the definition of “unsubsidized competitor” and elevate the evidentiary standard governing the challenge process. Although the challenged order applies only to price cap carriers, NTCA’s members have a vested interest in the outcome of this proceeding as any rules adopted may influence the processes and procedures for funding in purportedly competitive areas served by smaller rural carriers.

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wire- less, cable, satellite, and long distance and other competitive services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

² *In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90, DA 13-1113 (Wireline Comp. Bureau rel. May 16, 2013)

I. THE BUREAU SHOULD DISMISS WISPA’S CHALLENGE TO THE DEFINITION OF UNSUBSIDIZED COMPETITOR AS UNTIMELY

The Wireline Competition Bureau did not in this Order alter the definition of “unsubsidized competitor.” In 2011, the Commission adopted 47 C.F.R. §54.5 and defined an unsubsidized competitor as “a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support.” Although Petitions for Reconsideration of that Order were filed and remain pending before the Commission, that issue is not properly before the Bureau now. WISPA’s request that the Bureau reconsider the definition of “unsubsidized competitor” should be dismissed as untimely and improper.

II. THE PUBLIC INTEREST DEMANDS THAT A COMPETITOR BE DEFINED AS ONE THAT OFFERS COMPETING VOICE AND BROADBAND SERVICES

WISPA is misguided in its argument that a service provider need only partially compete to be considered a competitor. Most of WISPA’s members offer only fixed wireless broadband services, and do not provide VoIP or other voice services.³ Standalone fixed wireless broadband services fall short of ensuring a robust and full-service competitive alternative to existing full-service providers. WISPA confuses the private interests of its members in competing against carriers who meet the qualifications of an eligible telecommunications carrier (ETC) with the public interest in ensuring that quality and affordable voice AND broadband services are available to rural consumers.

Standalone fixed wireless broadband service providers are neither telecommunications providers nor voice service providers. They have elected not only to sidestep federal and state telecommunications regulations and obligations, but also have declined to offer the voice

³ WISPA Partial Petition for Reconsideration of Connect America Fund, WC Docket No. 10-90, *et al, Report and Order*, p. 2 (filed Dec. 29, 2011)

services that remain the principal defined services that are supported by Federal universal service mechanisms pursuant to Section 254(c)(1) of the Act.

This is certainly their purview, and this is not to pass any judgment on the business choices of WISPA's members – but those choices have consequences for both those companies and the customers to whom they would offer only a subset of the services that the Commission sought to promote in the Transformation Order. WISPA's members have the ability to become unsubsidized competitors by upgrading their networks to offer voice telephony services that meet the minimum service eligibility standards of the Commission's rules. They could also, at the same time, become competitive local exchange carriers ("CLECs") that commit to offer quality voice services to all consumers on an equal basis throughout the relevant serving area(s); it is not as if the "burdens" of becoming a CLEC are so great that committed WISPs could not overcome them. However, unless and until they offer the full complement of vital voice and broadband service provided by ETCs, and satisfy all applicable criteria in the Commission's rules, those who choose for whatever reason not to offer voice telephony services – the only service that is in fact supported by the universal service fund even after the Transformation Order – should not be permitted to seek the reduction or elimination of the high-cost support furnished to ETCs whose networks enable them to provide both essential voice and broadband services to rural consumers.

III. THE COMMISSION SHOULD NOT ELEVATE THE EVIDENTARY STANDARD FOR CHALLENGING A DETERMINATION OF SERVED OR UNSERVED

WISPA also argues that the Bureau should elevate the evidentiary standard necessary when challenging a determination of a census block as served or unserved. It asks the Bureau to force challengers to prove that an area is not served by "clear and convincing evidence" rather than the "more likely than not" standard that was adopted. WISPA's approach would therefore

place the entire burden on the party lacking the evidence to meet the burden. For example, the Order assumes, “for administrative ease,” that providers meeting the speed requirements will meet the performance criteria, but there is nothing a challenger could point to supporting an allegation that an individual provider fails to meet the performance threshold. In other words, WISPA’s proposal puts would-be challengers in the impossible position of having to prove a negative with evidence that alleged competitors might or might not make publicly available. It would be virtually impossible to meet the WISPA proposed evidentiary standard.

Furthermore, substantial reliance on the National Broadband Map (NBM) for factual determinations of this kind is unjustified. There is much on the record demonstrating that the mapping tools and data upon which this process would rely are unreliable. A series of flaws and erroneous reporting may lead the mapping data to simultaneously overstate broadband coverage in some areas and understate it in others. At best, the NBM is useful in determining where an area might be served. The “challenge process” adopted by the Bureau is woefully insufficient to ferret out false or imprecise indications or omissions of meaningful competitive presence and the need for support, or lack thereof, in a given area.

Indeed, if anything, the Bureau’s process gives substantial benefit-of-the-doubt to would-be “unsubsidized competitors” by compelling others to disprove self-reported and unsubstantiated coverage on the NBM. The statutory mandate of universal service requires more than reliance on flawed, dated, and incomplete mapping database that is subject to correction only through a challenge process. A more precise, robust and disciplined process should be triggered at the request of a would-be competitor. Rather than forcing challengers to “prove a negative” with respect to the absence of effective competition, the burden should be on the would-be unsubsidized competitor to make the necessary showings as to the scope and extent of

its service offerings. The Competitor should be required to aver and show in a petition to a state commission that at a minimum:

1. It is a state-certified carrier or ETC (to ensure adequate opportunity for regulatory and consumer advocate oversight);
2. It can satisfy any public interest obligations required of a USF recipient (to ensure continuing service quality);
3. It can deliver, as of the filing of the petition, both voice telephone service and the required broadband speeds and with latency and usage limits that meet the Commission's broadband performance requirements through the use of its own or in substantial part and in a manner comparable to the relevant USF recipient (fixed or mobile).⁴ A fixed service can be either fixed wired or fixed terrestrial wireless. A fixed terrestrial wireless service should be defined as one that does not support roaming and requires a fixed ground station transmitting to a fixed transceiver located at the customer's premises;
4. It offers each of those broadband and voice services on a stand-alone basis on a month-to-month basis at rates that are reasonably comparable to those offered by the USF recipient (to ensure affordability of rates for consumers);

⁴ As the Bureau recognizes, a party cannot be considered an "unsubsidized competitor" unless it offers a meaningful substitute, including latency, usage, and other pricing and service characteristics. See, *Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who Is an Unsubsidized Competitor*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 1517, ¶ 20 (Wireline Comp. Bur. 2013).

5. It will comply with all of the same reporting, service monitoring and other “accountability requirements” as the USF recipient for the area in question (to ensure a continuing ability for the Commission to monitor service quality and ensure that the state and the Commission are aware to the extent that the competitor no longer serves the entire market in the manner presented in the initial petition); and
6. It neither receives high-cost support of any kind NOR cross-subsidizes its operations in the specific, affected study area with revenues from other areas of operation or sources. Any competitor seeking to establish that it provides unsubsidized competition should be required to present evidence demonstrating that the area is indeed “economic” of its own accord and can support a stand-alone business plan.

Once such a petition has been filed, the USF recipient whose support would be affected by the purported presence of unsubsidized competition should then be given the opportunity to rebut or otherwise address the competitor’s showing.

It is essential as a matter of public policy and the statutory mandate of universal service, that a more robust and carefully designed process based upon objective and complete data be employed in assessing the purported presence of “unsubsidized competition.” Presumptions of service and service quality based on maps with known flaws and self-reported data do not provide a complete record by which the Bureau or Commission can judge whether support for a carrier should be awarded or modified and does nothing to ensure that consumers have the opportunity to enjoy quality and affordable voice and broadband services.

IV. CONCLUSION

For the above reference reasons, the Wireline Competition Bureau should deny the Wireless Internet Service Providers Association's Petition for Partial Reconsideration.

Respectfully submitted,



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